

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:13-CR-83 JCM (CWH)

Plaintiff(s),

V.

DERRICK PHELPS, CYNTHIA PHELPS,
LINDA MACK,

ORDER

Defendant(s).

Presently before the court is defendant Cynthia Phelps' motion to extend surrender date. (Doc. # 170). The government filed a response (doc. # 172) and defendant has filed a reply (doc. # 175).

On March 6, 2013, the government filed an indictment charging defendant and her husband and co-defendant, Derrick Phelps, each with one count of conspiracy to commit bank fraud, mail fraud, and wire fraud, a violation of 18 U.S.C. §§ 1349, 1344, 1341, 1343, and seven counts of bank fraud, violations of 18 U.S.C. § 1344. (Doc. # 1). Defendants Derrick and Cynthia Phelps pled guilty to all eight counts on April 21, 2014 through separate, nearly identical plea agreements. (*See* docs. ## 92, 93). The plea agreements set forth guideline ranges of 121 – 151 months incarceration per count for each defendant. (*See* doc. # 93).

On December 2, 2014, this court sentenced defendant Cynthia Phelps to 48 months per count to run concurrently and Derrick Phelps to 70 months per count to run concurrently. (See doc. # 168). The court ordered defendants to self-surrender to the Bureau of Prisons on March 6, 2015. (*See id.*). Defendants' counsel requested the court hold the judgment in abeyance for two days so that the defendants, who have a twelve-year-old son, could make arrangements with their

1 family members before being designated to a facility. (*See id.*). The government said it did not
 2 oppose this request, so long as defendants submitted only proposed facility designations. (*See*
 3 *id.*).

4 On December 4, 2014, defendants filed their joint request for designation as to Derrick
 5 Phelps and Cynthia Phelps. (Doc. # 171). Defendant Cynthia Phelps also filed the instant
 6 motion to extend surrender date and a proposed order. (Doc. # 170). Defendant requests that the
 7 court extend her surrender date to March 6, 2017. (*See doc. # 170*). Defendant states that by
 8 staggering her surrender date from that of her husband and co-defendant, Derrick Phelps, she
 9 may better ease the transition of the couple's minor child, and avoid having the child relocate out
 10 of Texas. (*See id.*).

11 The government opposes defendant's motion and asks that the court deny defendant's
 12 request. (*See doc. # 172*). The government asserts that there is at least one caregiver available to
 13 care for defendant's son, though the caregiver may not live in Texas. (*See id.*). The potential
 14 need for defendant's son to relocate out of Texas is not a reason to delay defendant's self-
 15 surrender. (*See id.*). Additionally, the government notes that defendants have had nearly eight
 16 months since their guilty pleas to plan for their incarceration, and still have three more months to
 17 complete this transition before their March 2015 self-surrenders. (*See id.*).

18 This court agrees with the government's position. Defendants Derrick and Cynthia
 19 Phelps both signed plea agreements accepting responsibility for their crimes. The plea
 20 agreements set forth a guideline recommendation of 121 – 151 months per count for each
 21 defendant. This means defendants both signed plea agreements that would place them in custody
 22 of the Bureau of Prisons for a minimum of a just over ten years. Defendants have had eight
 23 months since signing these agreements to make arrangements on behalf of their son in
 24 anticipation of serving out their sentences for the crime to which they pled guilty. Defendants
 25 still have three more months before they have been ordered to self-surrender, which this court
 26 finds as adequate time to make arrangements.

27 . . .

28 . . .

Additionally, the defendants carried out the illegal activity that led to their convictions from approximately January 2003 through November 2006. The court finds no reason to further delay defendant Cynthia Phelps' imprisonment for these crimes. Therefore the court will deny defendant Cynthia Phelps' request to extend her surrender date to March 6, 2017.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Cynthia Phelps' motion to extend surrender date (doc. # 170) be, and the same hereby is, DENIED.

DATED December 12, 2014.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE